



Appeal Decision

Site visits made on 7 & 8 November 2019

by Martin Andrews MA(Planning) BSc(Econ) DipTP & DipTP(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 January 2020

All Appeals

- The appeals are made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015(as amended).
 - The appeals are made by Mr Paul O'Neill on behalf of Maximus Networks Ltd against the decisions of the Council of the Royal Borough of Kensington and Chelsea.
 - The development proposed in each case is the installation of a public call box.
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Appeal Ref: APP/K/5600/W/19/3231595

Pavement outside Sheraton Park Tower, 101 Knightsbridge, London SW1X 7RQ

- The application, Ref. PA/18/07197, dated 7 November 2018 was refused by notice dated 28 December 2018.
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Appeal Ref: APP/K/5600/W/19/3231602

Pavement adjacent to 6 Fulham Road, London SW3 2NW

- The application Ref. PA/18/07304, dated 7 November 2018, was refused by notice dated 31 December 2018.
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Appeal Ref: APP/K/5600/W/19/3231609

Pavement outside 60 Sloane Avenue, London SW3 3DD

- The application Ref. PA/18/07268, dated 7 November 2018, was refused by notice dated 31 December 2018.
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Appeal Ref: APP/K/5600/W/19/3231630

Pavement outside 61-63 Sloane Avenue, London SW3 3DH

- The application Ref. PA/18/07269, dated 7 November 2018, was refused by notice dated 31 December 2018.
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Appeal Ref: APP/K/5600/W/19/3231597

Pavement outside 150-152 Kings Road, London SW3 4UT

- The application Ref. PA/18/07212, dated 7 November 2018, was refused by notice dated 28 December 2018.
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Appeal Ref: APP/K/5600/W/19/3229143

Pavement outside 85-89 Kings Road, London SW3 4NX

- The application, Ref. PA/18/06050, dated 1 October 2018, was refused by notice dated 26 November 2018.
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continued

Appeal Ref: APP/K/5600/W/19/3231632

Pavement outside 85-95 Kings Road, London SW3 4NX

- The application, Ref. PA/18/07284, dated 7 November 2018, was refused by notice dated 31 December 2018.
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Appeal Ref: APP/K/5600/W/19/3231623

Pavement outside 278 Kings Road, London SW3 5AW

- The application, Ref. PA/18/07252, dated 7 November 2018, was refused by notice dated 31 December 2018.
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Decisions

1. The appeals are dismissed.

Preliminary and Procedural Matters

2. These appeals concern individual proposals for the installation of public call boxes of the same design (referred to as 'Max 2') within the pavement area of the public highway at a number of locations in Kensington and Chelsea. For administrative convenience and ease of reference the appeals are combined in a single decision letter.
3. The appellant is a licenced electronic communications code operator and as such benefits from deemed planning permission for the proposed public call boxes erected as communications apparatus falling within the permitted development rights of Schedule 2, Part 16, Class A, paragraph A.1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 ('the GPDO'), subject to the prior approval requirements under paragraph A.3. Following the appellant's application to the Council under these provisions it was determined that prior approval was required for the siting and appearance of the communication apparatus.
4. On 25 May 2019, the GPDO was amended through the coming into force of the Town and Country Planning (Permitted Development, Advertisement and Compensation Amendments) (England) Regulations 2019. This amendment has had the effect of removing permitted development rights to install a public call box under Schedule 2, Part 16, Class A of the GPDO. However, Part 5 of the 2019 Regulations provides that where an appeal has been made within six months of the date of notice of refusal of a prior approval application submitted before 25 May 2019, the planning permission granted by Schedule 2, Part 16, Class A of the GPDO continues to have effect in relation to a public call box as if the amendments made to the GPDO by the 2019 Regulations had not been made. This is the position in respect of all the appeals in this decision letter.
5. All of the Notices of Refusal in these appeals issued towards or at the end of 2018 stated in addition to the objections on siting and / or appearance that *'The application for prior approval does not fall within the ambit of Part 16 of the Town and Country Planning (General Permitted Development)(England) Order 2015, as it is not considered to be for the purpose of electronic operator's communication network and it is not required for these purposes'*.
6. The decision of the Court in respect of *Westminster CC v SSHCLG & New World Payphones Ltd [2019] EWHC 176 (Admin)* concerning prior approval for telephone call box development was subsequently issued on 5 February 2019

and has been the subject of representations in these appeals by the Council and the appellant, the latter including Counsel's opinion. Amongst other matters, the Westminster judgement confirms that the assessment as to whether a telecommunications apparatus falls within the scope of Part 16, Class A of the GPDO should be made before matters pertaining to the siting and / or appearance are considered.^[1]_{SEP}

Main Issue

7. Having regard to the above, it follows that the main issue in these appeals is whether or not the proposals are solely for the purpose of the operator's electronic communications network.

Reasons

8. As mentioned in paragraph 2 above, each of these appeals concerns the installation of a 'Max 2' public call box of the same design. In the light of the Westminster judgement, the aforementioned Counsel's opinion examines the implications, if any, of this judgement specifically in relation to the Max 2 public call box.
9. The opinion argues that there are material differences between the New World call boxes in the Westminster case and the Max 2. In respect of the former it says *'The proposed development included an advertising panel and an inbuilt facility to illuminate and to display advertisements. These features were 'not there at all for the telecommunications function'. By clear contrast, none of the Maximus appeal cases include any advertising features. All the design elements of the public call boxes proposed by Maximus form part of the telecommunications function..... . The proposed development includes no elements that are there for the purposes of advertising..... . Accordingly, the conclusion of a dual purpose in the New World case can have no application to the facts in the Maximus cases'*.
10. In my appraisal of the appellant's evidence for all the appeals in this decision letter I have carefully examined the application plans for the Max 2 call boxes. On the applications' drawing entitled 'MAX2 ASSEMBLY Rev. C' and dated 06.09.2018, within the Inset box the front and rear of the proposed call box unit are identified in Isometric View at scale 1:30. The main part of the drawing, at the slightly larger scale of 1:25, shows the details of each of these elevations. Of particular relevance is that the rear of the unit is identified as a *'Non-illuminated display panel'*, whilst there is an additional reference to a *'Visual Area'* with a width of 1100mm and a height of 1700mm. I consider that this information confirms that in addition to the rear panel being used to access the internal equipment of the call box for the purpose of maintenance, there is an inbuilt facility that could be used for display purposes without any further modifications to the structure.
11. This inherent element of the Max 2 call box design requires assessment in the light of the Westminster judgement. Paragraph 37 begins *'In my view the whole development for which prior approval is sought must fall within the class relied on, and no part of it can fall outside it'*. In paragraph 39 the judgement says: *'A development therefore falls outside the scope of Class A Part 16 if it is not "for the purpose" of the operator's network. That means, at least in the specific context of a GPDO permission, that a proposed*

development falls outside it, if part of it falls outside it. It cannot be said that the whole falls within the GPDO'. The paragraph concludes: 'A development which is partly "for the purpose" of the operator's network, and partly for some other purpose, is not a development "for the purpose" of the operator's network, precisely because it is for something else as well. The single dual purpose development must be judged as a whole.'

12. Applying the Court's interpretation of the GPDO to the detailed design of the Max 2 call box, I consider on the main issue that it is reasonable to conclude that the proposals are not solely for the purpose of the operator's electronic communications network and that accordingly they fall outside Schedule 2, Part 16, Class A of the GPDO. For this reason, the further matters of the siting and appearance of the public call box in each appeal do not fall to be considered.
13. For the above reasons and having had regard to all other matters raised the appeals are dismissed.

Martin Andrews

INSPECTOR